



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 21-00768
)
Applicant for Security Clearance)

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on May 1, 2020. On December 1, 2021, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 21, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 27, 2022, and the case was assigned to me on February 15, 2023. On February 24, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for April 19, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant Exhibits (AE) A through I were admitted into evidence without objection. Applicant testified but did not present the testimony of any other witnesses. DOHA received the transcript (Tr.) on April 26, 2023.

I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted AE-J (banking screenshots), AE-K (resolution letter dated March 1, 2021), AE-L (Consent Order dated March 22, 2019), and AE-M (bill pay history from bank), which were admitted without objection. The record closed on May 5, 2023.

Findings of Fact

Applicant admits the nine debts alleged in SOR ¶¶ 1.a through 1.i, totaling \$33,197. The debts consist of eight consumer debts and a child support delinquency. His admissions are incorporated into the findings of fact.

Applicant is 41 years old. He graduated high school in 1999 and attended college for two years until he was severely injured in a car accident. He has worked for his sponsor since 2009. He holds a second job as a courier working two hours a week in the morning. He earns \$100,000 a year from his sponsor. His second job pays \$100 a week. (Tr. at 19-21.) He divorced in 2019 after ten years of marriage and has two grade school aged children. His spouse left him in February 2019 and moved in with one of his co-workers. He currently pays \$1,100 in child support but child support has had been as high as \$1,390. His former spouse has custody of the children and in 2020 moved them to another state without court approval.

Applicant's financial issues started in 2016. In addition to his salary, his wife earned \$35,000. His wife handled their finances. Unbeknownst to him she used money intended for their bills to give to her parents who resided in a foreign country. (Tr. at 21-22.) They had a home with \$2,100 monthly mortgage. After his wife left him, he held onto the home so that he had a place for his children. His former spouse then fled the state with the children. As part of the marital settlement agreement, he was responsible for 60 percent of the debt and his former spouse 40 percent. She has not paid her share of the marital debts. (Tr at 56 and AE-L at 8.) He stated he "failed to make a lot of payments, just because I was trying to maintain my mortgage and my kids and live too." (Tr. at 16.) He sold the house in April 2020 and was essentially homeless for a period until he found a room to rent in a home. (Tr. at 16, 44 and AE-D.) He has been "able to knock down a lot of these bills" because he was able to get the part-time job, restructure the child support amount, and sell the house. (Tr. at 16-17.) He has been "paying off smaller debts first and moving on to the bigger ones" as additional income becomes available. (Tr at 39.) He provides support for his children above his court ordered obligation. (Tr. at 52.)

SOR ¶ 1.a: past-due car loan charged off for \$3,947. The loan was in Applicant's and his spouse's names. The car had been totaled in 2018 and the insurance did not

cover all that he owed. After the divorce, his spouse stopped making payments. He assumed the payments and has reduced the debt to \$784. (Tr. at 28, 35 and AE-C at 28.)

SOR ¶ 1.b: past-due cable account referred for collection for \$2,314. Applicant resolved the debt in a settlement in February 2022. (Tr. at 35 and AE-C at 40.)

SOR ¶ 1.c: past-due account past-due account charged off for \$5,300. Applicant has been making \$100 payments on the debt and increased those payments to \$150 after resolving other debts. (Tr. at 36, AE-C at 29, and AE-J.)

SOR ¶ 1.d and 1.e: past-due accounts referred for collection for \$1,840 and \$890. These were accounts held by both Applicant and his former spouse. He paid the debt alleged in SOR ¶ 1.d in 2022 and will begin payment on the debt alleged in SOR ¶ 1.e when the debt alleged in SOR ¶ 1.a is resolved in May 2023. (Tr. at 41 and AE-C at 30.)

SOR ¶ 1.f: past-due store account charged off for \$1,953. Applicant and his former spouse held this account jointly. He did not realize it was still delinquent. He stated he will begin payment on this debt when the debt alleged in SOR ¶ 1.a is resolved in May 2023. (Tr. at 41 and AE-C at 30.)

SOR ¶ 1.g: past-due child support referred for collection for \$6,872. The initial child support order was ordered vacated on November 18, 2021. (AE-A.) The initial child support order had been backdated to when his former spouse left with the children, resulting in an immediate arrearage. The Consent Order modified the amount downward. (AE-B at 2.) He presently has a positive balance of \$120. (Tr. at 41-42.)

SOR ¶ 1.h: past-due credit card account charged off for \$7,420. Applicant and his former spouse held this card jointly. He has spoken with the creditor and explained his plan. He will start payments when he finishes paying off some of the other debts (Tr. at 42.)

SOR ¶ 1.i: past-due account referred for collection for \$2,661. Applicant stated he had paid off this account. He provided AE-K showing he paid the debt off on March 1, 2021. (Tr. at 29.)

As noted above, Applicant has resolved three of the eight consumer accounts, and has provided evidence of ongoing payments for two more. He has acted consistent with his stated plan of resolving a debt and moving onto another debt with the previously obligated income.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an

individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence admitted into evidence establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); and AG ¶ 19(c) (“a history of not meeting financial obligations.”)

The following mitigating conditions under AG ¶ 20 are relevant:

(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(b) and 20(d) are fully applicable. Applicant's financial difficulties were incurred as result of his divorce, which was a circumstance beyond his control. His former spouse did not abide by the marital settlement agreement. He has demonstrated through his actions that he is determined to overcome his indebtedness. He downsized his life and has adhered to a plan. He knows that regaining financial responsibility is essential to qualify for a security clearance and has taken reasonable and measured steps to resolve his debts. While he does not present a perfect case in mitigation, a perfection is not

required. Under the limited circumstances of this case, I find that his finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge